IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO.8018 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.D.S. Sawant, for the Petitioners

Mr. P.R. Arjunwadkar, for the Respondent

CORAM : F.I. REBELLO,J.
DATED : JANUARY 27, 2005
P.C.

. Rule. Heard forthwith.

2. The petitioners are aggrieved by the order of the trial Court dated 29th August, 2003 whereby their application for leading secondary evidence in respect of the agreement between the Plaintiff No.1 and Plaintiff No.2 has been rejected. The trial Court has proceeded on the footing that the Plaintiff No.1 has not in the pleadings alleged the execution of leave and licence and in these circumstances as no case was made out in the pleadings there is no question of permitting the secondary evidence to be led. On behalf of the petitioner learned Counsel contends that in the earlier order the application by the petitioner directing the respondent to produce the evidence in the form of agreement was rejected on the ground that the petitioners to produce the original. As the original is not found in the

possession of the petitioners they sought leave to lead secondary evidence and in these circumstances the Court ought not to have rejected their application.

. On the other hand on behalf of the respondent his learned Counsel contends that the learned Judge has addressed himself to the correct issue. In the absence of pleadings the learned Judge was right in rejecting the application. Hence no interference is called for.

3. After hearing the parties to my mind there are pleadings which need not be exactly in the terms what had to be pleaded. In paragraph 2 of the plaint the plaintiff No.1 has pleaded that the plaintiff No.2 who is the owner of the property had handed over possession of the property to the Plaintiff No.1. Thereafter there is a reference to the letter of 16th October, 1992. In that letter there is a reference to forwarding the copy of the agreement as also the copy of the resolution. In other words by referring to the letter of 16th October, 1992 coupled with the averments of possession the essential requirements have been made out. The Court must remember that Rules of

procedure are not to defeat the ends of justice. In these circumstances to my mind the trial Court proceeded on too technical aspect to hold that no case has been made out. Considering that there is material on record disclosing that there was agreement and as the petitioners had been able to show that the original is missing their application for leading secondary evidence in respect of the agreement ought to have been allowed. In the light of that the following order:-

. The impugned order dated 29th August, 2003 is set aside. The application at Exh.26 is allowed. The petitioners are permitted to lead secondary evidence on the agreement of leave and license as sought by them. Rule made absolute accordingly. No order as to costs. Certified copy expedited.

(F.I. REBELLO, J.)